

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
ENTERED

DEC 01 2005

PERRY ALLEN AUSTIN,

Petitioner,

v.

DOUGLAS DRETKE, Director, Texas
Department of Criminal Justice,
Institutional Division,

Respondent.

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CIVIL ACTION NO. H-04-2387

Michael N. Milby, Clerk of Court

**ORDER GRANTING PETITIONER'S MOTION FOR
LEAVE TO AMEND AND TO STAY AND ABEY FEDERAL PROCEEDINGS**

Petitioner Perry Allen Austin, a Texas death row inmate, has filed a petition for a writ of habeas corpus. Respondent Doug Dretke is scheduled to file an Answer to this petition. Austin now seeks leave to amend his petition to raise new claims, not previously available to him, and seeks an order to stay and abey these proceedings so that he may return to state court and exhaust his new claims.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a pleading "shall be freely given when justice so requires." Good cause has been shown for the failure to raise these claims previously, and Dretke does not oppose Austin's motion. In these circumstances, justice requires that Austin have an opportunity to amend his petition to bring his potentially meritorious claims and that these proceedings be stayed to allow him to exhaust his claims in state court.

Accordingly,

IT IS ORDERED that Petitioner's Motion for Leave to Amend to Stay and Abey (sic) Federal Proceedings (Docket Entry 36) is GRANTED.

IT IS FURTHER ORDERED that Austin shall file his successive petition in state court within 30 days of the date of this Order;

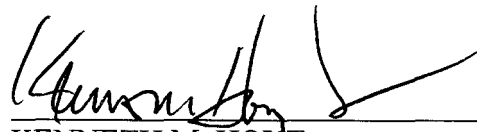
IT IS FURTHER ORDERED that Austin shall file his amended petition for writ of habeas corpus in this court within 30 days of the completion of state habeas proceedings, including any application for writ of certiorari to the United States Supreme Court;

IT IS FURTHER ORDERED that Dretke shall file an answer within 90 days after Austin files his amended petition; and

IT IS FURTHER ORDERED that Austin may respond to any Answer within 30 days after such motion is filed.

SO ORDERED.

SIGNED at Houston, Texas, on this 1st day of December, 2005.


KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE